



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1992

Ms. Helen K. Bright
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR92-390

Dear Ms. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16396.

The Vice President for Academic Affairs of The University of Texas at Arlington received a request from a former nursing student of The University of Texas at Arlington for the following information:

- 1a. All rules, regulations, procedures, letters, policies, directives and historical communications relating to the alleged Official State policy of short term flexible entry courses at public universities;
- 1b. The documents submitted to the Attorney General in OR91-432;
- 1c. TAC 5.7 The rule was originally proposed to the (Coordinating) Board by the Texas State University System Board of Regents, which had implemented similar minimum standards for its five campuses. What were these similar minimum standards? [Emphasis deleted.]
2. All administrative letters, directives or policies related to grade appeals and student rights in grade appeals and due process issued by the UT System or Board of Regents;

3. Produce all administrative letters, rules, directives or policies that would deny a student any rights of due process during a grade appeal, specifically, the right to question his teacher before a university official;
4. All grade appeal procedures, policies, and practices at all UT System campuses;
5. The original petitions of all students with pending litigation against any and all UT System Universities;
6. Produce all administrative letters, rules, directives or policies on all subjects issued by the UT System or Board of Regents.

You say the University has responded to four items in the request, specifically, items 1b, 2, 3, and 6. You seek to withhold the remaining items of information under two theories. First, you assert that all of the requested documents are exempt from required public disclosure by section 3(a)(3) of the Open Records Act. Second, you assert that because two items of the request, 1a and 1c, require you to respond to factual inquiries and to perform research, the Open Records Act does not apply.

We agree that the Open Records Act does not require you to respond to the inquiry in item 1c. *See* Open Records Decision No. 555 (1990) at 2. In regard to the remaining items at issue, items 1a, 4 and 5, we will consider your claim that section 3(a)(3) applies.

Section 3(a)(3) excepts from required public disclosure information that relates to pending litigation to which a governmental body is a party. Open Records Decision No. 551 (1990). You assert that the requested information relates to two law suits the requestor has brought against the University of Texas at Arlington. The Second District Court of Appeals issued an opinion in one suit instituted because the requestor received a failing grade in a nursing course. *See Tobias v. The University of Texas at Arlington, et al.*, 824 S.W.2d 201 (Tex. App.--Fort Worth 1991, writ pending). The requestor is appealing this decision. You submitted for our inspection a copy of the application for writ of error to the Texas Supreme Court, Cause #D-2102.

The requestor brought the other suit to compel production of certain documents under the Open Records Act. You submitted for our inspection a copy of the motion for rehearing currently pending before the Court of Appeals for the Second District of Texas. The documents which are the subject of this motion are substantially the same documents requested in items 1a and 4 of this request. It is the policy of this office not to issue rulings about the public disclosure of information that is the subject of litigation pending before a court. Accordingly, we make no determination with regard to items 1a and 4.

As for item 5, "[t]he original petitions of all students with pending litigation against any and all UT System Universities," you say that a computer check of open litigation shows approximately twenty pending lawsuits against the UT system ranging from personal injury to disciplinary dismissal. You said you did not submit copies of the requested original petitions because they were not readily available. You also that the University of Texas at Arlington and the UT system are anticipating further litigation by the requestor because he has claimed that he will file two more suits. Section 3(a)(3) does not apply where there is no showing of a direct relationship between the information sought and the pending litigation. See Open Records Decision No. 551 at 5. You have not established that the petitions relate to the two pending lawsuits. Further, we are unable to understand how a petition in, for example, a suit for personal injury relates to a suit based on the receipt of a failing grade in nursing school or other litigation you anticipate that the requestor will file. Accordingly, you may not withhold the information requested in item 5.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR-390.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo".

Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Ref.: ID# 16396

cc: Mr. Richard Tobias
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